

Neighbours' trees

Anyone can talk to a lawyer for free at Tasmania Legal Aid.

To get free legal information call 1300 366 611, drop into our Hobart or Launceston office (no appointment necessary) or use the Legal Talk chat function on our website. We are open Monday to Friday, 9am to 5pm.

A lawyer can listen to your story and help identify the next steps you can take.

Tree branches overhanging onto your property? Or are tree roots from a neighbours tree causing you issues on your side of the fence?

What can I do if my neighbour's plants and trees affect my property?

The aim of the *Neighbourhood Disputes about Plants Act 2017* is to resolve common neighbourhood disputes about:

- plants that overhang, cause a nuisance or overshadow property
- dangerous plants
- plants that interfere substantially with the use and enjoyment of your property.

It also covers the responsibilities a person has in relation to trees on their property and the processes to resolve any issues or disputes that arise from problem plants.

Who is responsible?

The owner of land handles plants or trees on their property. This means that they handle pruning or trimming back overhanging plants or trees and make sure that the plant or tree does not cause danger or serious injury to people or another area of land. They must also make sure that their plants or trees do not cause damage or interfere with the use and enjoyment of their neighbour's land. If there is more than one owner of land, both are responsible and liable in relation to the plants or trees.

I have overhanging branches on my property, can I cut them myself?

If there are branches or plants overhanging onto your property, or you have tree roots coming through onto your property, you can prune back or cut away the overhang from your side of the property. You do not need to seek permission to do so from your neighbour, if the trimming/pruning is within your property line.

It is a good idea to talk to your neighbour first, so that they are aware of the issue as it is their responsibility to look after the plant. This may also avoid any disputes over the issue.

Any trimmings or pruned branches should be returned to the owner, including any fruit that may be attached to it. This doesn't mean that you can dump the tree debris over your neighbour's fence. Instead, let them know that you will be returning the tree trimmings and return them in a way that doesn't damage their property.

What can I do about tree debris that falls onto my property?

Any leaves, fruit, sticks, twigs or foliage that falls off the tree onto your property and is causing a nuisance can be returned to your neighbour to dispose of. You cannot cut a tree down if it is simply shedding its leaves in its natural cycle, even if it is causing a nuisance such as blocking drains, gutters or staining concrete. There is no legal remedy for these types of matters.

What steps do I need to take to resolve a dispute with my neighbour?

The law says that you must take reasonable steps to resolve a dispute informally. This can be done by talking to your neighbour, or writing to them, so that they are aware of the issue, and asking that they take steps to resolve it.

If you cannot resolve the issue informally, then you may give the plant owner a formal notice. This can either be a ['branch removal notice'](#) or ['notice about land affected by plant'](#).

A branch removal notice can be given to your neighbour for plants that are 2.5 m or less above ground level of the affected land and extend 50 cm over your land.

You must give the landowner at least 30 days from the time you give the notice to remove any branches or overhang and the date must be clearly specified. Alternatively, you can offer to have the branches professionally removed and include a quote for that to be done.

For all other disputes such as obstruction of view, loss of sunlight, interference with the enjoyment and use of the land or if a tree is considered dangerous, then a 'notice about land affected by plant' is used. This notice must say the reason you believe the land is being affected by the plant, the action you wish to be taken, and that your neighbour must respond within 14 days.

What can I do if my neighbour won't do anything after notice was served?

If your neighbour does not remove the overhanging branches or attend to an offending plant by the specific date, you may take steps to remove the branches yourself. If you have served a notice on your neighbour, you don't have to return the branches to them. You cannot enter their land to remove any branches. You can only do this from your own property.

If you choose to have the branches removed by a professional, your neighbour is liable for those costs, if they are not more than \$500.

If your issue relates to the use and enjoyment of land or there is a view obstruction and you have issued an affected land notice and haven't received a reply, your only formal remedy is to apply to the Tasmanian Civil and Administrative Tribunal (TASCAT). You **are not** allowed to act on the offending plant yourself unless it is over your boundary.

Formal dispute resolution

If your matter is not resolved informally and you want to take it further, you may apply to the Resource and Planning Stream of TASCAT – the Tasmanian Civil & Administrative Tribunal. TASCAT will consider all the factors of the matter, including the location of the plant, the degree of overhang or obstruction, the danger or damage the tree poses, whether the plant was that way before you bought the property or whether it became worse over time, or if the plant is a risk to safety.

You must be able to show that you have made reasonable attempts to resolve the matter with your neighbour. If TASCAT makes an order in your favour, that order is then binding on your neighbour.

Selling your property subject to an application or order

If an application to the Tasmanian Civil and Administrative Tribunal (TASCAT) relates to your property as the owner and you are considering selling your property, you must provide the purchaser with a copy of the application and any other information filed with TASCAT before they enter a contract of sale. If you do not do this, you could be fined.

Any owner of land who has entered a contract of sale in relation to their land must also notify TASCAT that the purchaser has joined as a party to the application. If this isn't done, the property owner can be fined.

If notice of an application or order is not given to the purchaser before the contract to buy the property is entered, the purchaser may end the contract of sale. If the purchaser is made aware of an order after settlement has occurred, then the previous owner still is liable to complete the work contained in any order.

Is there anything else I need to know?

The *Neighbourhood Disputes about Plants Act 2017* applies to most plants, including:

- trees
- hedges, or groups of plants
- the fruits, seeds, leaves or flowers of a plant
- a bare trunk
- any stump or root of a plant
- dead plants.

However the *Neighbourhood Disputes about Plants Act 2017* does not apply to:

- plants on a farm or nursery
- live boundary fences, such as a hedge that separates a property
- plants on council property or land owned by the government e.g. public parks, gardens or reserves.

Where can I find out more?

TASCAT www.tascat.tas.gov.au/resource-and-planning/neighbourhood-disputes-about-plants

This is written for people who live in or who are affected by the laws of Tasmania, Australia. The law changes all the time – this information is not legal advice. If you have a legal problem, you should talk to a lawyer before making a decision about what to do.